

THIS RESCISSION AGREEMENT AND MUTUAL RELEASE ("Rescission") is made and entered into as of February 1, 2017, by and among CITY OF FLORESVILLE, TEXAS, a Texas Home Rule Municipality ("City"), and HEARTLAND PARK AND RECREATION, LLC., a Texas Limited Liability Corporation ("Heartland"). City and Heartland may be referred to herein as the "Parties" collectively or a "Party" individually.

RECITALS

WHEREAS, City and Heartland are nominally parties to that certain Construction Agreement, dated October 7, 2016 ("Agreement"), pursuant to which Heartland assumed certain responsibilities for construction of a park project for the City in exchange for monetary compensation in the amount of \$2,222,300.00;

WHEREAS, on September 22, 2016 the City by City Council action authorized a plan as set forth in the attachments included with the Agreement ("Park Plan"), but there is a potential misunderstanding regarding the issuance of specific authorization for entering into a contract with Heartland to begin construction. In addition, fund availability due to timing of receipt of monies to be dedicated to construction was inadequate pursuant to the laws of the state of Texas;

WHEREAS, the parties now desire to unwind and rescind the transactions referenced in the above Agreement and any other agreements between the Parties relating to the Park Plan due to, among other reasons, certain necessities to be in compliance with state law and specific approvals for appropriation of funds; and

WHEREAS, to accomplish the unwinding of the Agreement the Parties execute this Rescission subject to the conditions set forth below.

NOW, THEREFORE, the Parties hereby agree as follows:

1. RESCISSION OF AGREEMENT

On the terms and subject to the conditions of this Rescission, the Parties hereby agree to a mutual release of the Agreement, and all other agreements executed prior to the date of execution of this Rescission, between the Parties as such may relate to construction of the Park Plan.

2. MUTUAL REPRESENTATIONS AND WARRANTIES; COVENANTS

Each party represents and warrants to the other party that:

- 2.1 <u>Authorization</u>. All corporate or government action on the part of the respective party and its nominees, officers, directors and shareholders necessary for the authorization, execution and delivery of this Agreement and the performance of all obligations of the respective party hereunder has been taken. This Agreement constitutes a valid and legally binding obligation of the parties, enforceable in accordance with its respective terms.
- Agreement Not in Contravention. Neither the execution and delivery of this Agreement, nor the consummation of the transactions provided for herein will (i) result in the material breach of or constitute a material default or give rise to any right of termination, cancellation or acceleration under any of the terms, conditions, or provisions of any lease, license, promissory note, contract, agreement, mortgage, deed of trust or other instrument or document to which each of the parties is a party, or (ii) violate any order, writ, injunction, decree, law, statute, rule or regulation applicable to any of the Parties.
- 2.3 <u>Information and Statements</u>. No representation or warranty made by or on behalf of the parties with respect to the terms of this Rescission contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements so made, in light of the circumstances under which they are made, not misleading.

3. MUTUAL RELEASE

- 3.1 Each Party on behalf of itself and its respective partners, agents, assigns, heirs, officers, directors, employees executors, and attorneys ("Affiliates") hereby forever and finally releases, relieves, acquits, absolves and discharges the other party and their Affiliates from any and all losses, claims, debts, liabilities, demands, obligations, promises, acts, omissions, agreements, costs and expenses, damages, injuries, suits, actions and causes of action, of whatever kind or nature, whether known or unknown, suspected or unsuspected, contingent or fixed, that they may have against the other party and their Affiliates, including without limitation claims for indemnification, based upon, related to, or by reason of any matter, cause, fact, act or omission occurring or arising at any moment out of the Agreement.
- 3.2 Each Party acknowledges that this mutual release does not constitute any admission of liability whatsoever on the part of any of the undersigned.
- 3.3 Each Party represents and warrants that there has been no assignment or transfer of or giving of a security interest in or encumbrance upon any interest in any claim which it or its Affiliates may have against any other Party. Each of the Parties further represents that such Party: (i) has carefully read this Rescission; (ii) knows the contents of this Rescission; (iii) has had the advice of counsel of such Party's choosing in connection with the subject matter hereof, and the advice thereof is reflected in the provisions of this Rescission; and (iv) has not been influenced to any extent whatsoever in doing so by any other Party or by any other person or entity, except for those representations, statements and

promises expressly set forth herein.

4. REQUIREMENTS FOR RESCISSION TO BE EFFECTIVE

4.1 This Rescission shall become effective when: (1) this Rescission is executed and delivered to all of the parties hereto, (2) a contract for the construction of Phase 1 of the Park Plan with an effective date of September 22, 2016, and substantially similar to that attached as Exhibit A hereto, is executed and delivered to all Parties, and (3) a contract for the construction of Phase 2 of the Park Plan with an effective date of January 4, 2017, and substantially similar to that attached as Exhibit B hereto, is executed and delivered to all Parties.

5. INDEMNIFICATION

Each party shall defend, indemnify, and hold the other harmless from and against any and all losses, damages, liabilities and expenses (including penalties and attorneys' fees) which are incurred or suffered by or imposed upon the other party arising out of or relating to (i) any failure or breach by the party to perform any of its covenants, agreements or obligations under this Agreement, or (ii) any inaccuracy or incompleteness of any of the representations and warranties of the party contained in this Agreement or in any Exhibit delivered in connection with this Agreement.

6. MISCELLANEOUS

- 6.1 <u>Counterparts</u>. This Rescission may be executed in any number of counterparts, including facsimiles thereof, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.
- 6.2 <u>Entire Agreement</u>. Unless otherwise specifically agreed in writing, this Rescission represents the entire understanding of the parties with reference to the transactions set forth herein and supersede all prior warranties, understandings and agreements heretofore made by the parties, and neither this Rescission nor any provisions hereof may be amended, waived, modified or discharged except by an agreement in writing signed by the party against whom the enforcement of any amendment, waiver, change or discharge is sought.
- 6.3 <u>Specific Performance</u>. The parties agree that irreparable damage would occur in the event any provision of this Rescission was not performed in accordance with the terms thereof and that a Party seeking enforcement of this Rescission shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.
- 6.4 <u>Assignment of Agreement</u>. This Rescission shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns. No Party may assign either this Rescission or any of its rights, interests or obligations hereunder without the prior written approval of the other Party.

- 6.5 Governing Law and Attorneys 'Fees. This Rescission shall be governed by and construed in accordance with the laws of the State of Texas with venue agreed upon as Wilson County, Texas. In the event of any action at law or suit in equity in relation to this Rescission or other instrument or agreement required hereunder, the prevailing party in such action or suit shall be entitled to receive its or his attorneys' fees and all other costs and expenses of such action or suit.
- 6.6 <u>Further Action</u>. In case at any time after the execution date of this Rescission any further action is necessary or desirable to carry out the purposes of this Rescission the appropriate person or persons shall take such action as promptly as practicable and authorized by law.
- 6.7 <u>Severability</u>. Any term or provision of this Rescission that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Rescission to be executed and effective as of the day and year first above written.

CITY OF FLORESVILLE, TEXAS



By: Cullin Consuly - Deppel

Mayor Cecelia Gonzalez-Dippel

Date: 2/9/2017

ATTEST:

Monica Cordova, City Secretary

ACTION BY THE CITY COUNCIL

Upon motion duly made pursuant to Agenda Item 6.b by Councilperson Nissen, seconded by Councilperson Jimenez, the public record does duly reflect that Agenda Item 6.b authorized the execution of this Rescission and associated documents as approved by a vote of 5 in favor, 0 opposed, 0 abstaining, and 0 absent on January 26, 2017.

By: ('Mulu Confuty')
Mayor Cecelia Gonzalez-Dippel

Date: 2/9/2017

ATTEST:

Monica Cordova, City Secretary

HEARTLAND PARK & RECREATION,
LLC
By:
Print Name: SEAN SPENCES
Title: CENGRAL MANAGE

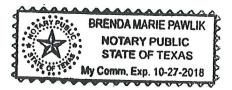
Date: 2/9/2017

STATE OF TEXAS §
COUNTY OF Wilson §

Before me, the undersigned authority in and for Wilson County, Texas, on this day personally appeared <u>Sean Spencer</u>, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the <u>Sean Manager</u> of Heartland Park & Recreation, LLC, and that he is authorized by said legal entity to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this the 9 day of February

2017.



Notary Public in and for the State of Texas





CONSTRUCTION AGREEMENT

This construction Agreement ("Agreement") is entered into effective <u>January 4</u>, 2017, ("Effective Date"), by and between Heartland Park & Recreation, LLC, ("Contractor"), and the City of Floresville, Texas ("City"), for the construction of certain improvements described in Exhibit "A" attached hereto (City of Floresville Athletic Park - EDC Project or ("Project"). For convenience, Contractor and City may hereinafter be referred to collectively as "parties", and individually as a "party".

For and in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. <u>Employment of Contractor and Scope of the Work.</u>

1. City agrees to engage Contractor and Contractor hereby agrees to perform the work and services consisting of the construction of the City of Floresville Athletic Park - EDC Project, in accordance with the bid/quote of Heartland Park and Recreation, LLC, attached hereto as Exhibit "A".

B. Contract Documents.

- 1. The Contract Documents consist of this Agreement and following exhibits attached hereto:
 - i. Exhibit A Heartland Park & Recreation, LLC, spreadsheet for the City of Floresville Athletic Park Project EDC;
 - ii. Exhibit B Site Plan by Hayes Engineering, Inc.;
 - iii. Exhibit C Heartland Park & Recreation, LLC, Project Inspection Form (sample);
 - iv. Exhibit D Heartland Park & Recreation, LLC, Invoice (sample);
 - v. Exhibit E Heartland Park & Recreation, LLC, Conditional Waiver and Release Upon Progress Payment (sample); and
 - vi. Exhibit F Conditional Waiver and Release Upon Final Payment (sample).

C. Time for Completion

1. The work to be performed under this Contract shall be commenced on or before January 4, 2017, and shall be substantially completed on or before August 31,

- 2017, ("Date of Substantial Completion"). Time is of the essence for all deadlines stated in this Contract. For purposes of this Agreement, the term "substantially complete" shall mean that the improvements and facilities are ready to be used for their intended purpose, save and except for minor items to be addressed by Contractor on the City inspector's "punch list" which must be addressed prior to final approval and acceptance of the Project by the City.
- 2. Subject to Section H.10., Contractor acknowledges and agrees that it shall be liable to City in an amount equal to the sum of \$100.00 per day for each day that the Project is not complete by the Date of Substantial Completion. Contractor further agrees that any damages incurred by City as a result of Contractor's delay are not easily calculable and that this liquidated damages amount does not constitute a penalty, but rather constitutes a fair and reasonable estimate of the City's actual damages resulting from Contractor's unreasonable delay.

D. Contract Price

1. The Contract price shall be the sum of \$1,222,300.00 as evidenced by Exhibit A attached hereto, and shall not exceed such price without prior authorization in the form of a valid change order executed in accordance with Section E of this Agreement.

E. Change in the Work

- 1. Neither the scope of the work, the Date of Substantial Completion nor the Contract Price under this Agreement may be modified by Contractor without the consent of the City. The City's consent may only be given by the execution of one or more change orders. To be valid, a change order must be in writing, must specify the specific change requested, (e.g., materials, specifications, contract price, etc.), must itemize the additional cost associated with such requested change, and must be signed by an authorized City representative. If a change order is requested to modify the Date of Substantial Completion, the change order must specify the reason for the delay.
- 2. The City may request that Contractor perform additional work outside the scope of this Agreement, in accordance with applicable law, but Contractor is under no obligation to grant such request if the City and Contractor cannot reach an agreement as to the amount of additional compensation that would be required to perform the additional work. This change must be set forth in a change order executed in conformance with this Section E.
- 3. The City may request in writing that Contractor perform less work than what is required by this Agreement, and, in such case, the Contractor and the City shall agree to reduce the Contract Price in accordance with the reduction of work requested. This change must be set forth in a change order executed in conformance with this Section E.

F. Construction Management.

1. The City and Contractor shall each designate a representative to be the primary contact for all issues related to the Project. The City's representative or his designee shall have a right to inspect the Project at all times. However, neither the City's inspector nor the City shall have any liability for failing to identify defects in the work or services performed by Contractor. The City may issue a Stop Work Order if the City's inspector determines that the work or services performed by Contractor do not comply with the requirements of applicable law or any of the Contract Documents. The City shall not be required to make any further payment to Contractor under this Agreement until such defects are remediated by Contractor to the City's satisfaction.

G. Compensation and Method of Payment

- 1. The designated representatives of the parties shall meet at a minimum of once per month, but no more than two times per month to determine the percentage of the work performed by Contractor for payment to the Contractor. The representatives shall then complete and sign the Project Inspection Form attached hereto as Exhibit "C".
- 2. Contractor shall then submit to the City an Invoice in a form substantially similar to the form attached hereto as Exhibit "D". The Invoice shall identify the percentage of the work completed by contractor (based on the most recently signed Project Inspection Form) and the amount due to Contractor, which shall equal the product of the percentage of completion and the Contract Price. The Invoice shall be accompanied by a signed and notarized Conditional Waiver & Release on Progress Payment on a form substantially similar to the form attached hereto as Exhibit,"E".
- 3. The City shall pay the amount due to Contractor within 10 days from the date of the City's receipt of the Invoice.
- 4. The City may withhold payment to Contractor in the event that the City is notified by a subcontractor or supplier that the subcontractor or supplier has not been paid by Contractor. Such payment may be withheld until such time as Contractor supplies sufficient evidence (e.g., releases or waivers signed by the subcontractor or supplier) to City that the problem has been rectified.
- 5. After the Date of Substantial Completion, as determined by the City's inspector, the City shall release the final payment to Contractor upon completion of the following:
 - i. City's receipt of a final Invoice and Conditional Waiver & Release Upon Final Payment form (attached hereto as Exhibit "F") confirming that all bills for labor and materials have been paid and that no liens were filed on the Project;

- ii. The Contractor's completion of any items listed on the City's inspector's punch list (to be given to Contractor on the Date of Substantial Completion); and
- iii. The City's acceptance of the Project, which acceptance shall not be unreasonably delayed or withheld.

H. Contractor's Rights, Duties and Warranties

- 1. Contractor warrants and represents that:
 - i. the materials and equipment furnished under this Agreement will be of good quality and new unless the contract Documents require or permit otherwise;
 - ii. Contractor shall perform the work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard; and
 - iii. the work will conform to the requirements of the contract Documents and will be free from defects, except for those inherent in the quality of the work the contract Documents require or permit.
- 2. Contractor further warrants and represents to City that:
 - i. it has all personnel required in performing the work under this Agreement;
 - ii. all of the services required hereunder will be performed by Contractor or under Contractor's supervision; and
 - iii. that all personnel engaged in the work shall be qualified to perform such work.
- 3. Contractor shall furnish, at the Contractor's own cost and expense, all of the materials, supplies, machinery, equipment, tools, superintendence, labor (either directly or through subcontractors), insurance and other accessories and services as may be necessary in order to complete the Project in accordance with the Contract Documents.
- 4. Contractor shall at all times keep the jobsite free from all disposable material, debris and rubbish as is practicable and shall remove same from any portion of the jobsite when it becomes objectionable or when it interferes with the progress of the work.
- 5. During the construction, Contractor shall not damage improvements on any private or public property, including the jobsite. In the event Contractor damages such property, Contractor shall, at its own expense, immediately and fully restore such property to the condition existing prior to the damage.
- 6. Upon completion of the Work, Contractor shall remove from the jobsite all, materials, tools and equipment belonging to Contractor and restore the jobsite to

- an appearance and condition as specified in the Contract Documents or, if none is specified, to an appearance and condition acceptable to the City.
- 7. Contractor shall have on the jobsite at all time, as its agent, a competent superintendent capable of reading and thoroughly understanding the Contract Documents, and who is thoroughly experienced in the type of work being performed. The Superintendent shall have full authority to execute orders or directions and to promptly supply such materials, equipment, tools, labor and incidentals as may be required to complete the Project
- 8. The Contractor shall be responsible for all work performed by any subcontractors in accordance with Section 2251.022 of the Texas Government Code.
- 9. Contractor may suspend work on the Project in the event Contractor has complied with the proper procedures for procuring payment (as set forth in Section G) and the City does not timely pay Contractor in accordance with Section G. Should the City's failure to pay Contractor for a period in excess of 30 days from the date payment is due, Contractor may declare the City to be in material breach of this Agreement and exercise its rights under Section N. of this Agreement.
- 10. Contractor's timely performance under this Agreement may be excused for acts of God, by an act or neglect of the City or of an employee of the City, or of a separate contractor employed by the City; or by changes ordered in the Project; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes not reasonably within Contractor's control; or by delay authorized by the City pending mediation and arbitration. The date of Substantial Completion shall be extended by change order for the number of days the project is delayed pursuant to this paragraph, but not otherwise, and no penalty will be assessed to contractor as long as the work to be performed under this contract shall be substantially completed on or before the extended Date of Substantial Completion. However, Contractor must still submit change orders requesting extensions of time in accordance with Section E. of this Agreement.

I. INDEMNITY.

1. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS CONTRACT OR OTHER ACTIVITIES OF CONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY ACT OR

OMISSION OF CONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE.

J. Insurance

- 1. Contractor agrees to maintain insurance for comprehensive general liability, automobile liability insurance, and worker's compensation during the term of this Agreement in the amounts not less than those set forth below and meeting the following requirement:
 - i. Commercial General Liability Insurance at minimum combined single limits of \$500,000.00 per occurrence and \$1,000,000.00 general aggregate for Bodily injury and Property Damage.
 - ii. Workers Compensation Insurance at statutory limits, including employers liability coverage at minimum limits of \$50,000.00 by disease aggregate, \$100,000.00 by disease per occurrence, \$100,000.00 per occurrence each accident.
 - iii. Commercial Automobile Liability Insurance at minimum combined single limits of \$1,000,000.00 per occurrence for bodily injury and property damage, including non-owned and hired car coverage.
- 2. All such policies shall contain a waiver of subrogation rights against the City, and Contractor shall, <u>prior to the commencement of the work</u>, furnish the City with a valid Certificate of Insurance covering all workers and subcontractors, which shall name the City as an additional insured, which will be provided.

K. Subcontractors

1. Contractor shall solicit bids from local subcontractors and service providers where possible, provided that the City reserves the right to object to any subcontractor that the City deems, in its sole discretion, to be objectionable. Prior to commencing the work, contractor shall submit a list of subcontractors that Contractor intends to retain to work on the Project. Contractor shall not utilize any objectionable subcontractor on the Project.

L. **Dispute Resolution**

1. The parties agree to use reasonable efforts to resolve any and all disputes regarding the subject matter of this Agreement without resorting to litigation. If a dispute should arise regarding any aspect of this Agreement, the parties agree to meet informally to discuss the possible solutions to the dispute. Should the informal meeting fail to resolve the dispute, the parties may resort to litigation in a court of competent jurisdiction.

M. Additional Terms - TIPS - Meeting Bid Requirements

1. The City shall issue to Contractor purchase orders for the Project totaling the entire amount of the Contract Price and reflecting the same as the line item bid/quote provided by Contractor to the City, which shall state on each purchase order TIPS Purchase/Transaction. Contractor shall submit all documentation to and through TIPS to satisfy all bid requirements as outlined by the guidelines of the State of Texas.

N. Termination of Agreement.

- 1. If, for any reason, Contractor shall fail to fulfill in timely and proper manner its obligation under this Agreement, City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination by certified mail, return receipt requested, at the address specified below which shall specifying the effective date thereof, which notice must be delivered to Contractor at least three days before the effective date of such termination.
- 2. In the event City shall fail to pay Contractor in accordance Section G. or H.9., Contractor may terminate this Agreement by providing the City with written notice of such termination by certified mail, return receipt requested, at the address specified below.
- 3. Upon the City's termination pursuant to this Section N., Contractor shall immediately begin taking any necessary steps to cease work and leave the jobsite. Contractor shall be entitled to payment of such amounts as shall compensate Contractor for the services satisfactorily performed on or before the termination date in accordance with this Agreement. The City shall not be required to reimburse Contractor for any services performed or expenses incurred after notice of termination has been received by Contractor.
- 4. In the event this Agreement is terminated by either party as a result of the material breach of this Agreement by the other party, the non-breaching party may elect to file suit in a court of competent jurisdiction and recover its actual, but not consequential, damages from the breaching party.

O. Miscellaneous Provisions

1. City Not Obligated to Third Parties

City shall not be obligated or liable hereunder to any party other than Contractor, including, but not limited to, subcontractors and members of the public.

2. When Rights and Remedies Not Waive.

In no event shall the making by City of any payment to Contractor constitute or be construed as a waiver by City of any breach of covenant or any default which may exist on the part of Contractor, and the making of any such payment by City while any such breach or default shall exist in no way impairs or prejudices any right or remedy available to City in respect to such breach or default.

3. Assignability

Contractor may not assign, convey or transfer its interest, rights and duties under this Agreement without the prior written consent of City.

4. Notices

Any notices, bills, invoices, or reports required by this Agreement shall be sufficient if sent by the parties in the United States mail, postage paid, return receipt requested or via overnight delivery service, to the addresses noted below and shall be effective upon receipt if mailed to:

IF TO CITY:

City of Floresville 1120 D Street Floresville, TX 78114

IF TO CONTRACTOR:

Heartland Park & Recreation, LLC Attn: Mike Spencer P.O. Box 505 White Oak, Texas 75693

Either party may change the address and contact information stated in this paragraph by providing notice to the other party in accordance with this section.

5. Independent Contractor

Contractor is an independent contractor under this Agreement and shall not under any circumstances be considered an employee of the City.

6. Severability

If any of the terms or provisions of this Agreement are held for any reason to be invalid, void, illegal or unenforceable as a matter of law, the remainder of the Agreement shall remain in full force and effect and shall not be impaired, affected or invalided by such holding.

7. Amendment

The Contract Documents may not be amended or altered except by a written document signed by both parties.

8. **Authority to Execute**

The parties hereby warrant and represent that the undersigned person or persons are properly authorized to execute this Agreement on behalf of the parties.

9. Governing Law/Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action, arbitration or mediation brought hereunder shall lie in Wilson County, Texas.

10. Attorney's Fees

If it becomes necessary for any party to file suit to interpret or enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party, reasonable attorney's fees and costs of court.

Signed to be effective on the Effective Date.

CITY OF FLORESVILLE, TEXAS

Print Name: (ecelia GONZAlez Dipp

Title: Mayor

Date: 2/9/5017

ATTEST:

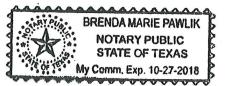
City Secretary

STATE OF TEXAS	§
V 1 (§
COUNTY OF WILSON	§

Before me, the undersigned authority in and for Wilson County, Texas, on this day personally appeared Cissy Conzalez-Dippell known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the is the Officer of City of Floresville, Texas, and that he is authorized by said legal entity to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this the 9 day of February

2016.



My Commission Expires: 10-27-18

Notary Public in and for the State of Texas

Dikenda II

Print Name

	HEARTLAND PARK & RECREATION, LLC
	By:
	Print Name: STA SPEACEL
	Print Name: STAN SPENCEL Title: CEMEROL MANAGEL
	Date: 2/9/2017
	,
STATE OF TEXAS §	
COUNTY OF WILSON §	
Before me, the undersigned authorit	ty in and for Wilson County, Texas, on this day
	known to me to be the person and officer
•	ng instrument and acknowledged to me that he is the
	ark & Recreation, LLC, and that he is authorized by
V	g instrument as the act of such corporation for the
purposes and consideration therein express	ed, and in the capacity therein stated.
Given under my hand and seal of of	ffice, this the $\frac{9}{4}$ day of February,
2011	
2016.	
BRENDA MARIE PAWLIK NOTARY PUBLIC STATE OF TEXAS	Notary Public in and for the State of Texas
My Comm. Exp. 10-27-2018	Brenda Marie tawlik
My Commission Expires:	Print Name
10-27-18	

10-27-18

City of Floresville

Athletic Park Project

EDC

Description

Cut/Fill Site Take Off - Engineering Dirt Work/Site Prep/Drainage Strip & Replace Top Soil Cut

Total Dirt Work/Site Prep

New Covered Batting/Pitching

Mueller 48' X 75' Structure Maroon Top Professional 2-Piece Mound w/Turf Collegiate Series Batting Tunnel Concrete Slab w/Footings Sub-Total Batting Cage Pitchers Protector Home Plate Mats

Freight

Total Batting Cage

Athletic Field - Other

Hydro Mulch - Common Areas Irrigation - Common Areas Security Fencing Sub Total



Number	Ľ.	Unit Cost	Total	Gastion .	Total	Total Project
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			↔	25,000.00		
	The state of the s		49	65,000.00		

EXHIBIT A

Description

Freight/Deliver Installation

Total Athletic - Other

Tark mitty of Taxa

Concrete Walks 15' width
Concrete Walk around Tree 15'
Stone Towers 4'X4' X 14' height
Decorative Fencing
6' Benches with Backs
Solar Trail-Walk Lights
Landscaping
Shade Structure 15' X 20'
Concrete Slabs 15'X 20'
Other Walks
Installation
Freight/Delivery

Total Entry & Plaza

Darking Improvements

6" Base Materials Compacted Prep & Materials Installation ADA Handicap Parking - Concrete 900 sq.ft.

Total Parking Improvement Estimate

Zumber	Ŝ	Unit Cost	Total		Total Project
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Description

Site Amenities All Recycled

8' Benches with Backs 8' Picnic Table Standard Trash Recep Mounts

Sub Total
Freight/Delivery
Installation

Total Site Amenities

Field Lighting Equipment
Baseball Fields - 2- 300', 2-225'
Equipment & Materials
Include Pole Erection and Assembly

Including Electrical for Field Lighting including underground service to each pole.

Football Field Lighting

Includes all Electrical for Park Runs to Concession-Restroom Scoreboards & Outlets

Total Lighting & Electrical

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Description

T Ball Field Backstops 10' with Top & Wings Intallation

Total T Ball Backstops

14,999.96

49

14,999.96

49

3,000.00

69

0

999.99

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69

4

Total Project

Total

Unit Cost

Number

1,154,500.96

22,986.93

49

1,131,514.03

49

Sub Total New Athletic Park

TIPS Discount

Sub Total

Other

Contingency Allowance Superintendent

Total Other

Total EDC Park

Notes to Bid

		2,00	785.97	20	\$ 90,785.97
And the state of t	-			-	
	-			-	\$ 1,222,300.00

30,000.00

69 69

Heartland Bid does not include underground electrical, transformers, trenching for power, field lighting and other site lighting other than Solar Lighting identified in the Heartland Bid.

Heartland Bid does include electrical and lighting budgets for Concession-Restroom and Band Shell on quotes where included. All Electrical Bid by Heartland is 5' off slab or location of determined need.

Bid does not include the moving of utilities, water lines, sewer lines, cable or any other like obstruction either known or unknown.

EXHIBIT A

Heartland Bid does not include sewer line, water lines from Tap to 5' off the slab or location of determined need. Provided by the City of Floresville including pipe, trenching and labor for installation.

Bid Proposal in total is subject to final surveying, Engineering on both Civil and MEP based upon the final Up of Down drawings and requirements set forth.

All dirt work and site work is subject to final Civil Engineering

Up or Down

Bid does not include permit fees from any governmental agency

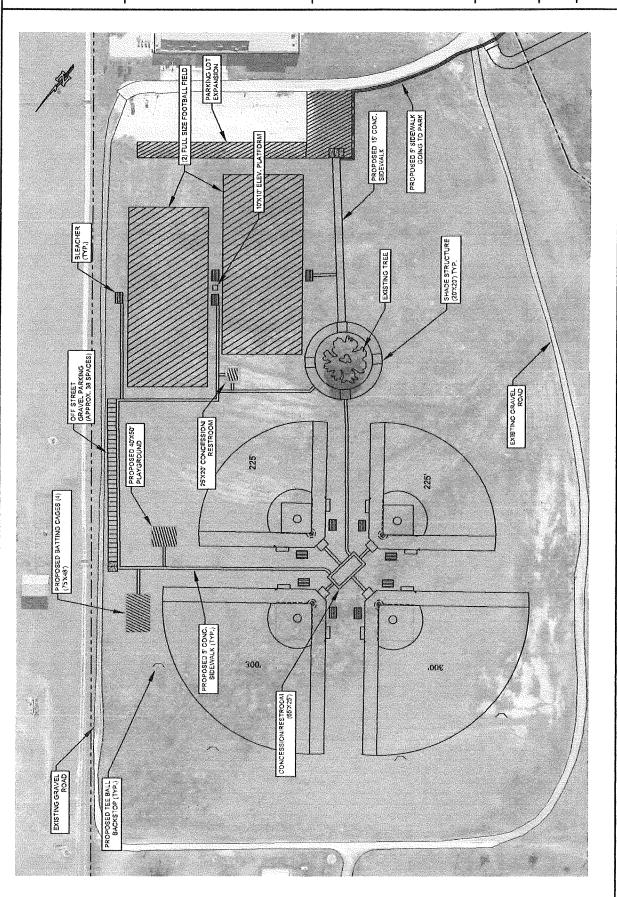
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CILK OF FLORESVILLE, TEXAS
HEARTLAND PARK & RECREATION

HAYES ENGINEERING, INC.
Total Supplement Engineering Print F-1865
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Project Inspection Form

Project: City of Floresville Athletic Park - EDC	
Inspection #	
Date:	
Name of Inspectors:	
Draw #:	
Percentage of work completed	
Description	1 -1
Please describe the current status of the Project since last inspecti	on below
Heartland Park & Recreation, LLC Inspector's Signature	Date:
	Date:
Floresville, Texas City Representative	
If you need addition space, use the back of this form.	
Please attach Photographs and/or other information that pertains t	o this Inspection report.
Send all documentation to Heartland Park & Recreation, LLC.	

EXHIBIT C

			INVOICE:
Heartland Park & Recreation PO Box 505 White Oak, Texas 75693-0505	866-388-1365		
SOLD TO: City of Floresville (EDC) 1120 D Street Floresville, TX 78114 SHIPPED TO: City of Floresville Athletic Park - ED	OC.	INVOICE DATE OUR ORDER NO. YOUR ORDER NO. TERMS SALES REP SHIPPED VIA	
ony of horozonic Automotive and Le		F.O.B. PREPAID or COLLECT	
Sales Tax Rate:			
QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
		SUBTOTAL	
		TAX	

THANK YOU FOR YOUR BUSINESS!

PO Box 505

MAKE ALL CHECKS PAYABLE TO: Heartland Park & Recreation

Attn: Accounts Receivable

White Oak, Texas 75693-0505

DIRECT ALL INQUIRIES TO:

email: mike@heartlandplay.com

Mike Spencer 800-388-1365 PAY THIS

AMOUNT

EXHIBIT D



CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Project: City of Floresville Athletic Park - EDC

On receipt by the signer of this document of a check from
(maker of check) in the sum of \$ payable to HEARTLAND PARK &
RECREATION, LLC, and when the check has been properly endorsed and has been paid by the
bank upon which it is drawn, this document shall become effective to release any mechanic's lien
right, any right arising from a payment bond that complies with a state or federal statute, any
common law payment bond right, any claim for payment, and any rights under any similar ordinance,
rule, or statute related to claim or payment rights for persons in the signer's position that the signer
has on the property ofto the following extent: stop
notice, or bond right the undersigned has on the job ofto the following
extent:
This release covers a progress payment for all labor, services, equipment, or materials
furnished to the property or to(person with whom signer
contracted) as indicated in the attached statement(s) or progress payment request(s), except for
unpaid retention, pending modifications and changes, or other items furnished.
Before any recipient of this document relies on this document, the recipient should verify
evidence of payment to the signer.
The signer warrants that the signer has already paid or will use the funds received from this
progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen
and suppliers for all work, materials, equipment, or services provided for or to the above referenced
project in regard to the attached statement(s) or progress payment request(s).

Heartland Park & Recreat	ion, LLC	
`		
Authorized Signature	10.00	-
		_
Print Name		
Street Address		_
City / State / Zip		-
STATE OF TEXAS	§	
COUNTY OF	§	
BEFORE ME, the un	ndersigned auth	ority, on this day personally appeared
	, who first being	ng duly sworn by me to be the person whose name is
subscribed to the foregoing,	acknowledged t	o me that they executed the same for the purposes and
consideration therein expres	sed and in the c	apacity therein stated.
SUBSCRIBED AND	SWORN TO A	AND ACKNOWLEDGED BEFORE ME on this
day of	_, 2017, to certi	fy which witness my hand and seal of office.
		Notary Public, State of Texas



CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Project: City of Floresville Athletic Park - EDC

On receipt by the signer of this docume	nt of a check from
(maker of check) in the sum of \$, payable to HEARTLAND PARK &
RECREATION, LLC, and when the check ha	s been properly endorsed and has been paid by the
bank upon which it is drawn, this document sha	all become effective to release any mechanic's lien
right, any right arising from a payment bond	that complies with a state or federal statute, any
common law payment bond right, any claim for p	ayment, and any rights under any similar ordinance,
rule, or statute related to claim or payment right	s for persons in the signer's position that the signer
has on the property ofto t	he following extent: stop notice, or bond right the
undersigned has on the job of	to the following extent:
This release covers the final nerment t	o the signer for all labor services, equipment, or
	o the signer for all labor, services, equipment, or
	(person with whom signer
contracted).	
Before any recipient of this document re	elies on this document, the recipient should verify
evidence of payment to the signer.	
The signer warrants that the signer has a	lready paid or will use the funds received from this
final payment to promptly pay in full all of the	signer's laborers, subcontractors, materialmen, and
suppliers for all work, materials, equipment, or	r services provided for or to the above referenced
project up to the date of this waiver and release	

Heartiand Park & Recre	auon, LLC	
Authorized Signature		
Print Name		
Street Address	4,00,00	
City / State / Zip		
STATE OF TEXAS	§	
COUNTY OF	§	
COUNTY OF	8	
BEFORE ME, the	undersigned authorit	y, on this day personally appeared
	, who first being	duly sworn by me to be the person whose name is
subscribed to the foregoin	g, acknowledged to n	ne that they executed the same for the purposes and
consideration therein expr	essed and in the capa	city therein stated.
SUBSCRIBED AN	ND SWORN TO AN	D ACKNOWLEDGED BEFORE ME on this
day of	, 2017, to certify	which witness my hand and seal of office.
		Notary Public, State of Texas





CONSTRUCTION AGREEMENT

This construction Agreement ("Agreement") is entered into effective September 22, 2016 ("Effective Date"), by and between Heartland Park & Recreation, LLC, ("Contractor"), and the City of Floresville, Texas ("City"), for the construction of certain improvements described in Exhibit "A" attached hereto (City of Floresville Athletic Park - City Park Project or ("Project"). For convenience, Contractor and City may hereinafter be referred to collectively as "parties", and individually as a "party".

For and in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. Employment of Contractor and Scope of the Work.

1. City agrees to engage Contractor and Contractor hereby agrees to perform the work and services consisting of the construction of the City of Floresville Athletic Park - City Park Project, in accordance with the bid/quote of Heartland Park and Recreation, LLC, attached hereto as Exhibit "A".

B. Contract Documents.

- 1. The Contract Documents consist of this Agreement and following exhibits attached hereto:
 - i. Exhibit A Heartland Park & Recreation, LLC, spreadsheet for the City of Floresville Athletic Park City Park;
 - ii. Exhibit B Site Plan by Hayes Engineering, Inc.;
 - iii. Exhibit C Heartland Park & Recreation, LLC, Inspection Form (sample);
 - iv. Exhibit D Heartland Park & Recreation, LLC, Invoice (sample);
 - v. Exhibit E Heartland Park & Recreation, LLC, Conditional Waiver and Release Upon Progress Payment (sample); and
 - vi. Exhibit F Heartland Park & Recreation, LLC, Conditional Waiver and Release Upon Final Payment (sample).

C. Time for Completion

1. The work to be performed under this Contract shall be commenced on or before November 15, 2016, and shall be substantially completed on or before August 31, 2017, ("Date of Substantial Completion"). Time is of the essence for all

deadlines stated in this Contract. For purposes of this Agreement, the term "substantially complete" shall mean that the improvements and facilities are ready to be used for their intended purpose, save and except for minor items to be addressed by Contractor on the City inspector's "punch list" which must be addressed prior to final approval and acceptance of the Project by the City.

2. Subject to Section H.10., Contractor acknowledges and agrees that it shall be liable to City in an amount equal to the sum of \$100.00 per day for each day that the Project is not complete by the Date of Substantial Completion. Contractor further agrees that any damages incurred by City as a result of Contractor's delay are not easily calculable and that this liquidated damages amount does not constitute a penalty, but rather constitutes a fair and reasonable estimate of the City's actual damages resulting from Contractor's unreasonable delay.

D. Contract Price

1. The Contract price shall be the sum of \$1,000,000.00 as evidenced by Exhibit A attached hereto, and shall not exceed such price without prior authorization in the form of a valid change order executed in accordance with Section E of this Agreement.

E. Change in the Work

- 1. Neither the scope of the work, the Date of Substantial Completion nor the Contract Price under this Agreement may be modified by Contractor without the consent of the City. The City's consent may only be given by the execution of one or more change orders. To be valid, a change order must be in writing, must specify the specific change requested, (e.g., materials, specifications, contract price, etc.), must itemize the additional cost associated with such requested change, and must be signed by an authorized City representative. If a change order is requested to modify the Date of Substantial Completion, the change order must specify the reason for the delay.
- 2. The City may request that Contractor perform additional work outside the scope of this Agreement, in accordance with applicable law, but Contractor is under no obligation to grant such request if the City and Contractor cannot reach an agreement as to the amount of additional compensation that would be required to perform the additional work. This change must be set forth in a change order executed in conformance with this Section E.
- 3. The City may request in writing that Contractor perform less work than what is required by this Agreement, and, in such case, the Contractor and the City shall agree to reduce the Contract Price in accordance with the reduction of work requested. This change must be set forth in a change order executed in conformance with this Section E.

F. Construction Management.

1. The City and Contractor shall each designate a representative to be the primary contact for all issues related to the Project. The City's representative or his designee shall have a right to inspect the Project at all times. However, neither the City's inspector nor the City shall have any liability for failing to identify defects in the work or services performed by Contractor. The City may issue a Stop Work Order if the City's inspector determines that the work or services performed by Contractor do not comply with the requirements of applicable law or any of the Contract Documents. The City shall not be required to make any further payment to Contractor under this Agreement until such defects are remediated by Contractor to the City's satisfaction.

G. Compensation and Method of Payment

- 1. The designated representatives of the parties shall meet at a minimum of once per month, but no more than two times per month to determine the percentage of the work performed by Contractor for payment to the Contractor. The representatives shall then complete and sign the Project Inspection Form attached hereto as Exhibit "C".
- 2. Contractor shall then submit to the City an Invoice in a form substantially similar to the form attached hereto as Exhibit "D". The Invoice shall identify the percentage of the work completed by contractor (based on the most recently signed Project Inspection Form) and the amount due to Contractor, which shall equal the product of the percentage of completion and the Contract Price. The Invoice shall be accompanied by a signed and notarized Conditional Waiver & Release on Progress Payment on a form substantially similar to the form attached hereto as Exhibit,"E".
- 3. The City shall pay the amount due to Contractor within 10 days from the date of the City's receipt of the Invoice.
- 4. The City may withhold payment to Contractor in the event that the City is notified by a subcontractor or supplier that the subcontractor or supplier has not been paid by Contractor. Such payment may be withheld until such time as Contractor supplies sufficient evidence (e.g., releases or waivers signed by the subcontractor or supplier) to City that the problem has been rectified.
- 5. After the Date of Substantial Completion, as determined by the City's inspector, the City shall release the final payment to Contractor upon completion of the following:
 - i. City's receipt of a final Invoice and Conditional Waiver & Release Upon Final Payment form (attached hereto as Exhibit "F") confirming that all bills for labor and materials have been paid and that no liens were filed on the Project;
 - ii. The Contractor's completion of any items listed on the City's inspector's punch list (to be given to Contractor on the Date of Substantial Completion); and

iii. The City's acceptance of the Project, which acceptance shall not be unreasonably delayed or withheld.

H. Contractor's Rights, Duties and Warranties

- 1. Contractor warrants and represents that:
 - i. the materials and equipment furnished under this Agreement will be of good quality and new unless the contract Documents require or permit otherwise:
 - ii. Contractor shall perform the work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard; and
 - iii. the work will conform to the requirements of the contract Documents and will be free from defects, except for those inherent in the quality of the work the contract Documents require or permit.
- 2. Contractor further warrants and represents to City that:
 - it has all personnel required in performing the work under this Agreement;
 - ii. all of the services required hereunder will be performed by Contractor or under Contractor's supervision; and
 - iii. that all personnel engaged in the work shall be qualified to perform such work.
- 3. Contractor shall furnish, at the Contractor's own cost and expense, all of the materials, supplies, machinery, equipment, tools, superintendence, labor (either directly or through subcontractors), insurance and other accessories and services as may be necessary in order to complete the Project in accordance with the Contract Documents.
- 4. Contractor shall at all times keep the jobsite free from all disposable material, debris and rubbish as is practicable and shall remove same from any portion of the jobsite when it becomes objectionable or when it interferes with the progress of the work.
- 5. During the construction, Contractor shall not damage improvements on any private or public property, including the jobsite. In the event Contractor damages such property, Contractor shall, at its own expense, immediately and fully restore such property to the condition existing prior to the damage.
- 6. Upon completion of the Work, Contractor shall remove from the jobsite all, materials, tools and equipment belonging to Contractor and restore the jobsite to an appearance and condition as specified in the Contract Documents or, if none is specified, to an appearance and condition acceptable to the City.

- 7. Contractor shall have on the jobsite at all time, as its agent, a competent superintendent capable of reading and thoroughly understanding the Contract Documents, and who is thoroughly experienced in the type of work being performed. The Superintendent shall have full authority to execute orders or directions and to promptly supply such materials, equipment, tools, labor and incidentals as may be required to complete the Project
- 8. The Contractor shall be responsible for all work performed by any subcontractors in accordance with Section 2251.022 of the Texas Government Code.
- 9. Contractor may suspend work on the Project in the event Contractor has complied with the proper procedures for procuring payment (as set forth in Section G) and the City does not timely pay Contractor in accordance with Section G. Should the City's failure to pay Contractor for a period in excess of 30 days from the date payment is due, Contractor may declare the City to be in material breach of this Agreement and exercise its rights under Section N. of this Agreement.
- 10. Contractor's timely performance under this Agreement may be excused for acts of God, by an act or neglect of the City or of an employee of the City, or of a separate contractor employed by the City; or by changes ordered in the Project; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes not reasonably within Contractor's control; or by delay authorized by the City pending mediation and arbitration. The date of Substantial Completion shall be extended by change order for the number of days the project is delayed pursuant to this paragraph, but not otherwise, and no penalty will be assessed to contractor as long as the work to be performed under this contract shall be substantially completed on or before the extended Date of Substantial Completion. However, Contractor must still submit change orders requesting extensions of time in accordance with Section E. of this Agreement.

I. INDEMNITY.

1. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS CONTRACT OR OTHER ACTIVITIES OF CONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF CONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE.

J. Insurance

- 1. Contractor agrees to maintain insurance for comprehensive general liability, automobile liability insurance, and worker's compensation during the term of this Agreement in the amounts not less than those set forth below and meeting the following requirement:
 - i. Commercial General Liability Insurance at minimum combined single limits of \$500,000.00 per occurrence and \$1,000,000.00 general aggregate for Bodily injury and Property Damage.
 - ii. Workers Compensation Insurance at statutory limits, including employers liability coverage at minimum limits of \$50,000.00 by disease aggregate, \$100,000.00 by disease per occurrence, \$100,000.00 per occurrence each accident.
 - iii. Commercial Automobile Liability Insurance at minimum combined single limits of \$1,000,000.00 per occurrence for bodily injury and property damage, including non-owned and hired car coverage.
- 2. All such policies shall contain a waiver of subrogation rights against the City, and Contractor shall, <u>prior to the commencement of the work</u>, furnish the City with a valid Certificate of Insurance covering all workers and subcontractors, which shall name the City as an additional insured, which will be provided.

K. Subcontractors

1. Contractor shall solicit bids from local subcontractors and service providers where possible, provided that the City reserves the right to object to any subcontractor that the City deems, in its sole discretion, to be objectionable. Prior to commencing the work, contractor shall submit a list of subcontractors that Contractor intends to retain to work on the Project. Contractor shall not utilize any objectionable subcontractor on the Project.

L. <u>Dispute Resolution</u>

1. The parties agree to use reasonable efforts to resolve any and all disputes regarding the subject matter of this Agreement without resorting to litigation. If a dispute should arise regarding any aspect of this Agreement, the parties agree to meet informally to discuss the possible solutions to the dispute. Should the informal meeting fail to resolve the dispute, the parties may resort to litigation in a court of competent jurisdiction.

M. Additional Terms - TIPS - Meeting Bid Requirements

1. The City shall issue to Contractor purchase orders for the Project totaling the entire amount of the Contract Price and reflecting the same as the line item bid/quote provided by Contractor to the City, which shall state on each purchase order TIPS Purchase/Transaction. Contractor shall submit all documentation to

and through TIPS to satisfy all bid requirements as outlined by the guidelines of the State of Texas.

N. <u>Termination of Agreement.</u>

- 1. If, for any reason, Contractor shall fail to fulfill in timely and proper manner its obligation under this Agreement, City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination by certified mail, return receipt requested, at the address specified below which shall specifying the effective date thereof, which notice must be delivered to Contractor at least three days before the effective date of such termination.
- 2. In the event City shall fail to pay Contractor in accordance Section G. or H.9., Contractor may terminate this Agreement by providing the City with written notice of such termination by certified mail, return receipt requested, at the address specified below.
- 3. Upon the City's termination pursuant to this Section N., Contractor shall immediately begin taking any necessary steps to cease work and leave the jobsite. Contractor shall be entitled to payment of such amounts as shall compensate Contractor for the services satisfactorily performed on or before the termination date in accordance with this Agreement. The City shall not be required to reimburse Contractor for any services performed or expenses incurred after notice of termination has been received by Contractor.
- 4. In the event this Agreement is terminated by either party as a result of the material breach of this Agreement by the other party, the non-breaching party may elect to file suit in a court of competent jurisdiction and recover its actual, but not consequential, damages from the breaching party.

O. Miscellaneous Provisions

1. City Not Obligated to Third Parties

City shall not be obligated or liable hereunder to any party other than Contractor, including, but not limited to, subcontractors and members of the public.

2. When Rights and Remedies Not Waive.

In no event shall the making by City of any payment to Contractor constitute or be construed as a waiver by City of any breach of covenant or any default which may exist on the part of Contractor, and the making of any such payment by City while any such breach or default shall exist in no way impairs or prejudices any right or remedy available to City in respect to such breach or default.

3. Assignability

Contractor may not assign, convey or transfer its interest, rights and duties under this Agreement without the prior written consent of City.

4. Notices

Any notices, bills, invoices, or reports required by this Agreement shall be sufficient if sent by the parties in the United States mail, postage paid, return receipt requested or via overnight delivery service, to the addresses noted below and shall be effective upon receipt if mailed to:

IF TO CITY:

City of Floresville 1120 D Street Floresville, TX 78114

IF TO CONTRACTOR:

Heartland Park & Recreation, LLC Attn: Mike Spencer P.O. Box 505 White Oak, Texas 75693

Either party may change the address and contact information stated in this paragraph by providing notice to the other party in accordance with this section.

5. Independent Contractor

Contractor is an independent contractor under this Agreement and shall not under any circumstances be considered an employee of the City.

6. Severability

If any of the terms or provisions of this Agreement are held for any reason to be invalid, void, illegal or unenforceable as a matter of law, the remainder of the Agreement shall remain in full force and effect and shall not be impaired, affected or invalided by such holding.

7. Amendment

The Contract Documents may not be amended or altered except by a written document signed by both parties.

8. **<u>Authority to Execute</u>**

The parties hereby warrant and represent that the undersigned person or persons are properly authorized to execute this Agreement on behalf of the parties.

9. **Governing Law/Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action, arbitration or mediation brought hereunder shall lie in Wilson County, Texas.

10. Attorney's Fees

If it becomes necessary for any party to file suit to interpret or enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party, reasonable attorney's fees and costs of court.

Signed to be effective on the Effective Date.

By: Ceclia Comaly- Deppel
Print Name: Cecelik GONZAlez-Dipper
Title: Mayer
Date: 2/9/2017

CITY OF FLORESVILLE, TEXAS

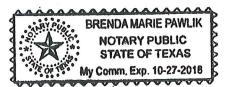
ATTEST:

City Secretary

STATE OF TEXAS	§
V 11	§
COUNTY OF WILSON	§

Before me, the undersigned authority in and for Wilson County, Texas, on this day personally appeared Lissy bonzaler-Dippell known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the is the of City of Floresville, Texas, and that he is authorized by said legal entity to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this the 9 day of February 2016.



Notary Public in and for the State of Texas

Print Name

	HEARTLAND PARK & RECREATION, LLC
	By:
	Print Name: SEN SPENCEL
	Title: CENERAL MINAGER
	Date: 2/9/2017
	•
STATE OF TEXAS §	
COUNTY OF WILSON §	
Before me, the undersigned authority	on and for County, Texas, on this day known to me to be the person and officer
whose name is subscribed to the foregoing	instrument and acknowledged to me that he is the k & Recreation, LLC, and that he is authorized by
3	instrument as the act of such corporation for the
purposes and consideration therein expressed	d, and in the capacity therein stated.
Given under my hand and seal of off	ice, this the 9 day of February,
2016.	
BRENDA MARIE PAWLIK NOTARY PUBLIC STATE OF TEXAS	Notary Public in and for the State of Texas
My Gomm. Exp. 10-27-2018	Brenda Marie tawlik Print Name
My Commission Expires:	
10-27-18	

City of Floresville

Athletic Park Project

Description

Baseball Field #1 - 300' 13-14 Year Old

Field Construction Clay/Blends

Hydro Mulch

Field & Dugout Fencing

Backstop

Dug Out Roof (Metal) & Frame

Irrigation System

Pitchers Rubber

Home Plate Set of Bases

Bleacher T Shades 12' X 25' X 10' eave

Bleachers 4 Row LP - 56 Seat

Bleacher Pads - 22' X 15'

Scoreboard 5' X 10' wireless

Fout Poles with wings

Dug Out Benches with backs

Field Stripping

2- Dug Out slabs 8' X 25' Concrete Behing Home Plate 20X25

Outfield Fence Windscreen 6' Top Rail with Ties - Yellow

Portable Fencing 200' Field

Sub Total

Freight/Delivery Installation - Equipment/Materials



Upper Park

Number		n	Unit Cost	Total		Total Project
	4-					
MALALAN THEORY ALTO COMMON COMMON CONTROL OF THE COMMON CONTROL OF	-	69	57,500.00	69	57,500.00	
	-	69	6,500.00	89	6,500.00	
	\vdash	49	34,000.00	69	34,000.00	
		69	15,000.00	69	15,000.00	
	CI	69	1,500.00	€Э	3,000.00	
and an overlate the whole of the collection and the first of the first	-	69	8,500.00	69	8,500.00	
Comments or executable Control Residence (and advented Franke (section))		69	60.00	↔	60.00	
		69	55.00	↔	55.00	
		69	140.00	↔	140.00	
	N	69	3,469.00	€	6,938.00	
	N	69	1,825.00	↔	3,650.00	
660 sq. ft.		49	3,300.00	49	3,300.00	
The state of the s	~	69	5,000.00	€>	5,000.00	
THE CONTRACT OF THE CONTRACT O	N	₩	900.00	↔	1,800.00	
	N	↔	600.00	€9	1,200.00	
	7-	↔	500.00	↔	500.00	
400 sq.ft.		69	5.00	49	2,000.00	
500 sq.ft.		69	5.00	€₽)	2,500.00	
3780 sq.ft.		69	0.75	↔	2,835.00	
950 lf		↔	1.50	↔	1,425.00	
				↔	2,229.00	
		_		es-	158,132.00	COMPANY AND THE CONTRACT OF TH
And the second of the second o		-		↔	4,500.00	
	İ			89	8,000.00	

Total 285' Baseball Field

Baseball Field # 2 - 300

13-14 Year Old

Field Construction Clay/Blends

Hydro Mulch

Field & Dugout Fencing

Backstop

Dug Out Roof (Metal) & Frame

Irrigation System

Pitchers Rubber

Forme Plate

Set of Bases

Bleacher T Shades 12' X 25' X 10' eave

Bleachers 4 Row LP - 56 Seat

Bleacher Pads - 22' X 15'

Scoreboard 5' X 10' wireless

Fout Poles with wings

Dug Out Benches with backs

Field Stripping

2- Dug Out slabs 8' X 25'

Concrete Behing Home Plate 20X25

Outfield Fence Windscreen 6' Top Rail with Ties - Yellow

Sub Total

Freight/Delivery

Installation - Equipment/Materials

Total 285' Baseball Field

Number	er		5	# C 2	Total	The state of the s	Total Project
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	And the second s	-			Open part of the	and the state of t	
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	entimental de de la constitución	4	69	6,500.00	ઝ	6,500.00	basedajoje estoje ajoje in sijalijuoje alauda lauvuna anatoniskoja anatoniskoje najoje dabed ir is samo konst
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					B	168,405.65	7.00,400

Baseball Field #3 - 2251 12 Year Old & Under

Field Construction Clay/Blends

Hydro Mulch

Field & Dugout Fencing

Backstop

Dug Out Roof (Metal) & Frame

Irrigation System

Pitchers Rubber

Home Plate

Set of Bases Bleacher T Shades 12' X 25' X 10' eave

Bleachers 4 Row LP - 56 Seat

Bleacher Pads - 22' X 15'

Scoreboard 5' X 10' wireless

Foul Poles with wings

Dug Out Benches with backs

Field Stripping 2- Dug Out slabs 8' X 25'

Concrete behind Home PI 20' X 15' Outfield Fence Windscreen 6'

Top Rail with Ties - Yellow

Sub Total

Freight/Delivery

Installation - Equipment/Materials

Total 225 Basebal Tied

490	2	1,000,1	Total	And and desirable desirables of the control of the	Total Project
ALCIA CIAN ARCHARDA PARAMENTARIA PARAMENTARIA CARLA PER CALCARDO PARAMENTARIA ARCHARDA PARAMENTARIA PARAMENTA		AND			AMBAN MANANANANANANANANANANANANANANANANANAN
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eda primario de la desención e constato de la desención de la desención de la defenda de la defenda de la dese Desención de la defenda de	69	27,500.00	↔	27,500.00	дал, а., дейлада (1)) — применяння пересона пересона пересона пересона пересона пересона пересона пересона пер
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	69	600.00	€9	1,200.00	te managam papaman desiran desiran desiran desiran desiran desarra desiran des
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Baseball Field # 4 MP - 225

Field Construction Clay/Blends

Hydro Mulch

Field & Dugout Fencing

Backstop

Dug Out Roof (Metal) & Frame

Irrigation System

Pitchers Rubber

Little League Portable Pitching Mound

Home Plate

Set of Bases with Double First Base

Bleacher T Shades 12' X 25' X 10' eave

Bleachers 4 Row LP - 56 Seat

Bleacher Pads - 22' X 15'

Scoreboard 5' X 10' wireless

Dug Out Benches with backs Foul Poles with wings

Field Stripping

Dug Out slabs 8' X 25'

Concrete behind Home Plate

20' X 15'

Double First Base

Outfield Fence Windscreen 6'

Top Rail with Ties - Yellow

Sub Total

Freight/Delivery

Installation - Equipment/Materials

Total 225' Baseball Field

1	Ž	Number	-	3	it Cost	Total		Total Project
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de significant de la maria del maria d		Baseball/Softball Field Concession/Restroom

R Panel Construction with interior U Par Concession Equipment Allowance Ceiling and Walls also includes Includes toilets - urinals - sinks Floor Drains, Hot Water Heater Plumbing - Rough In - Fixtures Slab/Foundation Undercut/Fill plus Stainless Table & Single Interior Finish with U Panels Overhead Door - 6' Roll Ups Perimeter Footings 12" X 18" Divider Walls Wood framed Concrete Slab 75'6" X 27'3" Restroom Partitions, Paper RPZ Fountain Drink Valve Engineered Metal Building 8' Overhang Front & Back 4' Height - Mission Stone with Top Stone & Mortar Grade Beams 12" X 12" 27'3" X 75'6" Roof Line 4' Stone Front & Sides Around entire Building Sink plus Mop Sink Framing Materials & Wind Curtains Trim & Finish Counter Tops

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1			Walter Committee	63	8,500.00	

Towel Dispensers, Toilet Paper Dispensers & Soap Dispensers Restroom Signs + ADA HVAC & Bathroom Vents Electrical & Lighting Other Walks round Building

Freight/Delivery
Building Installation
Wood Framing Installation
Restroom Amenities Installation

Total Project

Football Field # 160' X 360'

Field Construction
Hydro Mulch
Football Goals
Irrigation System
Bleacher T Shades 12' X 25' X 10' eave
Bleachers 4 Row LP - 56 Seat
Bleacher Pads - 22' X 15'

Scoreboard 5' X 14' - wireless Sideline Benches without backs Field Striping

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Elevated Viewing Platform with 6x6' Platform and 6x6' Canopy

Sub Total

Freight/Delivery
Electrical to Scoreboard
Installation - Equipment/Materials

Total Football/Soccer Fields

Sub Total New Athletic Park

TIPS Discount

Sub Total

Other

Construction Safety & Misc. Contingency Allowance Signage

Total Other

Total Project - Upper - City of Floresville

Number	Unit Cost	Total		Total	Project
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				40	1,000,000.00

Notes to Bid

Heartland Bid does not include underground electrical, transformers, trenching for power, field lighting and other site lighting other than Solar Lighting identified in the Heartland Bid

Heartland Bid does include electrical and lighting budgets for Concession-Restroom and Band Shell on quotes where included. All Electrical Bid by Heartland is 5' off slab or location of determined need.

Bid does not include the moving of utilities, water lines, sewer lines, cable or any other like obstruction either known or unknown.

Heartland Bid does not include sewer line, water lines from Tap to 5' off the slab or location of determined need. Provided by the City of Floresville including pipe, trenching and labor for installation.

Bid Proposal in total is subject to final surveying, Engineering on both Civil and MEP based upon the final

drawings and requirements set forth. Up or Down

All dirt work and site work is subject to final Civil Engineering

Up or Down

Bid does not include permit fees from any governmental agency

Subject to Final Civil Engineering

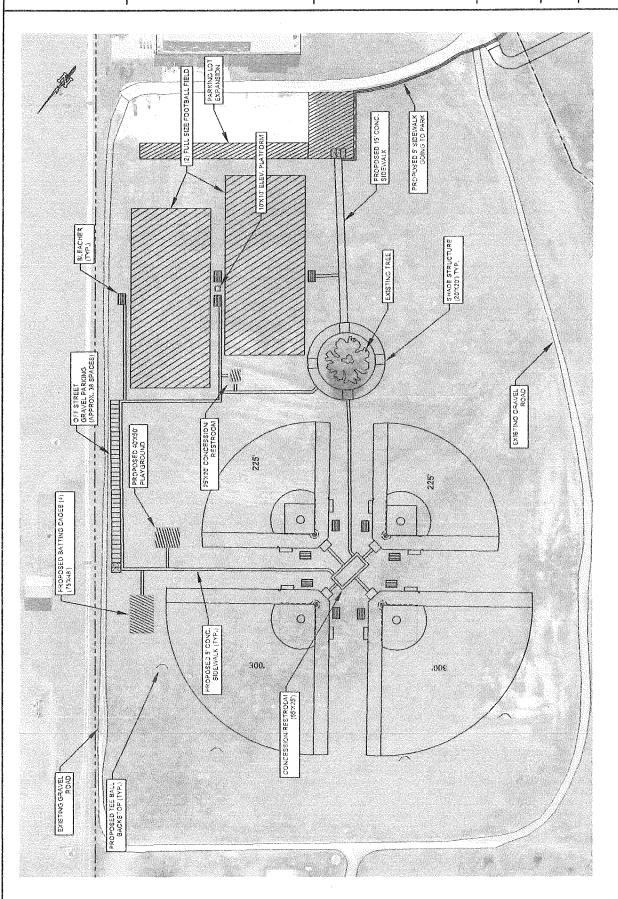
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and City Requirements

CILK OŁ ŁFOWRZAITTE' LEXYZ BYTT ŁIETD COWLIEK HEVYLITYND LYYK & WECKEYLION HAYES ENGINEERING, INC. 1116. 1240. 1416.

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SIGHT: ALL 2012





Project Inspection Form

Project: City of Floresville Athletic Park Project - Ci	ty Park
Inspection_#	
Date:	
Name of Inspectors:	<i>(</i>
Draw #:	
Percentage of work completed	
Description	
Please describe the current status of the Project since last insp	ection below
Heartland Park & Recreation, LLC Inspector's Signature	Date:
Floresville, Texas City Representative	Date:
If you need addition space, use the back of this form.	
Please attach Photographs and/or other information that pertain	ins to this Inspection report.
Send all documentation to Heartland Park & Recreation, LLC	

EXHIBIT C

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N	w	ш	

Heartland Park & Recreation PO Box 505

866-388-1365

White Oak, Texas 75693-0505

SOLD TO:

City of Floresville (EDC) 1120 D Street Floresville, TX 78114

SHIPPED TO:

800-388-1365

email: mike@heartlandplay.com

City of Floresville Athletic Park - EDC

INVOICE DATE
OUR ORDER NO.
YOUR ORDER NO.
TERMS
SALES REP
SHIPPED VIA
F.O.B.
PREPAID or COLLECT

Sales Tax Rate:

QUANTITY	DESC	RIPTION	UNIT PRICE	AMOUNT	
			SUBTOTAL		
			TAX		
			FREIGHT		
			1.114.6111		
DIRECT ALL INQUIRIE	S TO:	MAKE ALL	CHECKS PAYABLE TO:	PAY THIS	
Mike Spencer			ark & Recreation	AMOUNT	
WIRE Operior.		A 11 A	Att- A-sounts Descriptible		

THANK YOU FOR YOUR BUSINESS!

PO Box 505

Attn: Accounts Receivable

White Oak, Texas 75693-0505

EXHIBIT D



CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Project: City of Floresville Athletic Park Project - City Park

On receipt by the signer of this document of a check from
(maker of check) in the sum of \$\frac{\\$}{2}\$ payable to HEARTLAND PARK &
RECREATION, LLC, and when the check has been properly endorsed and has been paid by the
bank upon which it is drawn, this document shall become effective to release any mechanic's lien
right, any right arising from a payment bond that complies with a state or federal statute, any
common law payment bond right, any claim for payment, and any rights under any similar ordinance,
rule, or statute related to claim or payment rights for persons in the signer's position that the signer
has on the property ofto the following extent: stop
notice, or bond right the undersigned has on the job ofto the following
exten <u>t</u> :
This release covers a progress payment for all labor, services, equipment, or materials
furnished to the property or to(person with whom signer
contracted) as indicated in the attached statement(s) or progress payment request(s), except for
unpaid retention, pending modifications and changes, or other items furnished.
Before any recipient of this document relies on this document, the recipient should verify
evidence of payment to the signer.
The signer warrants that the signer has already paid or will use the funds received from this
progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen,
and suppliers for all work, materials, equipment, or services provided for or to the above referenced

project in regard to the attached statement(s) or progress payment request(s).

Heartland Park & Recrea	tion, LLC	
Authorized Signature		
Print Name		
Street Address		
City / State / Zip		
STATE OF TEXAS	§	
COUNTY OF	§	
BEFORE ME, the u	ndersigned autho	rity, on this day personally appeared
	, who first bein	g duly sworn by me to be the person whose name is
subscribed to the foregoing,	acknowledged to	me that they executed the same for the purposes and
consideration therein expres	ssed and in the ca	pacity therein stated.
SUBSCRIBED ANI	O SWORN TO A	ND ACKNOWLEDGED BEFORE ME on this
day of	, 2017, to certif	y which witness my hand and seal of office.
		Notary Public, State of Texas



CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Project: City of Floresville Athletic Park Project - City Park

On receipt by the signer of this docume	ent of a check from
(maker of check) in the sum of \$, payable to HEARTLAND PARK &
RECREATION, LLC, and when the check has	as been properly endorsed and has been paid by the
bank upon which it is drawn, this document sh	all become effective to release any mechanic's lien
right, any right arising from a payment bond	that complies with a state or federal statute, any
common law payment bond right, any claim for	payment, and any rights under any similar ordinance,
rule, or statute related to claim or payment righ	ts for persons in the signer's position that the signer
has on the property ofto	the following extent: stop notice, or bond right the
undersigned has on the job of	to the following extent:
	to the signer for all labor, services, equipment, or
materials furnished to the property or to	(person with whom signer
contracted).	
Before any recipient of this document i	relies on this document, the recipient should verify
evidence of payment to the signer.	
The signer warrants that the signer has	already paid or will use the funds received from this
final payment to promptly pay in full all of the	signer's laborers, subcontractors, materialmen, and

suppliers for all work, materials, equipment, or services provided for or to the above referenced

project up to the date of this waiver and release.

Heartland Park & Rec	reation, LLC	
Authorized Signature		-
Print Name		-
Street Address		_
City / State / Zip		- -
STATE OF TEXAS	§	
COUNTY OF	§	
	_	ority, on this day personally appeared ng duly sworn by me to be the person whose name is
	ing, acknowledged to	o me that they executed the same for the purposes and
SUBSCRIBED A	AND SWORN TO A	AND ACKNOWLEDGED BEFORE ME on this
day of	, 2017, to certif	fy which witness my hand and seal of office.
		Notary Public State of Texas